

Chapter 12

Criminal Justice Process: The Investigation

The System

- The criminal justice process includes everything that happens to a person from the moment of arrest, through prosecution and conviction, to release from jail or prison.
- There are separate state and federal criminal justice systems.

Arrest

- An arrest takes place when a person suspected of a crime is taken into custody.
- The police may have an arrest warrant, which shows that a judge agrees there is probable cause for the arrest.
- To show probable cause, there must be some facts that connect the person to the crime.

Use of Force

- A police officer may use as much physical force as is reasonably necessary to make an arrest.
- However a police officer who uses too much force or violates a citizen's rights can be sued under the federal Civil Rights Act.

Stops

- A police officer does not need probable cause to stop and **question** an individual on the street.
- However, officers must have **reasonable suspicion** to believe the individual is involved in criminal activity if they are going to stop and question them.

Reasonable Suspicion

- The reasonable suspicion standard does not require as much evidence as probable cause.
- Therefore, it is easier for police to stop and question a person than it is to arrest a person.

Search and Seizure

- The Fourth Amendment entitles each individual to be free from unreasonable searches and seizures and sets forth conditions under which search warrants may be issued.

Balancing Tests

- In evaluating Fourth Amendment cases, the courts seek to balance the government's need to gather evidence against an individual's right to expect privacy.
- Privacy is not an *enumerated* right in the Constitution; it is implied in the 4th Amendment and others.

The Home

- Traditionally, courts have found searches and seizures of private homes reasonable only when authorized by a valid search warrant.
- A search warrant is a court order issued by a judge who agrees that the police have probable cause to conduct a search of a particular person or place.

Searches w/o a Warrant

- However, there are many circumstances in which searches may be conducted *without* a warrant.
- Even so, these searches must be reasonable under the Fourth Amendment.

Searches w/o a Warrant

- **Incident** to (part of an) arrest
- Stop and **Frisk**
- **Consent**
- “Fixed point” or **non-individualized** searches (e.g., borders, airports, DUI checkpoints)
- **Vehicles** (must have probable cause)
- **Plain** view
- **Hot** pursuit
- **Exigent** (emergency) circumstances

Exclusionary Rule

- If a court finds that evidence was collected as the result of an unlawful search, the evidence cannot be used against the defendant at trial.
- “Fruit of the poisonous tree” doctrine
- This evidence is excluded, thus the rule is known as the “exclusionary rule.”
- *Weeks v US, Mapp v Ohio*

Searches at School

- In general, school officials ARE allowed to search students and their possessions without violating students' Fourth Amendment rights.
- Courts have recognized a school's legitimate interest in maintaining safety and security where young people are required to be and are under the supervision "in loco parentis" (in the place of parents).
- School personnel need only have "reasonable suspicion", not probable cause, to conduct such a search.

Racial profiling

- Inappropriate use of race or ethnicity as a factor in IDing people who may have broken the law
 - May use race as one among other factors if there is a reasonable justification for doing so
 - e.g.: if a witness description includes race or ethnicity – it's reasonable to use that information in a search

Interrogations

- 5th Amendment protects citizens against self-incrimination
- 6th Amendment guarantees right to assistance of an attorney
- Confessions must be voluntary and trustworthy
- Involuntary or forced confessions are inherently suspect (this is the issue in our pretrial motion)

Miranda

- Supreme Court ruled that defendants were entitled to know their rights before being questioned
 - Must be custodial **interrogation** (not free to leave)
 - Public safety exception